

ESTTA Tracking number: **ESTTA464684**Filing date: **03/30/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Who Dat?, Inc.		
Entity	Corporation	Citizenship	Louisiana
Address	19926 Whittenburg San Antonio, TX 78256 UNITED STATES		

Attorney information	Brandon J Frank Paillet Ramsey & Ostendorf, LLC 650 Poydras Street, Suite 1470 New Orleans, LA 70130 UNITED STATES brandon@proentertainmentlaw.com Phone:225-802-1499
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Registration Subject to Cancellation

Registration No	4118751	Registration date	03/27/2012
Registrant	MYERS, WILLIAM Buncy Village Door Pier 53, 309 W14, #1 New York, NY 10011 UNITED STATES		

Goods/Services Subject to Cancellation


Class 025. First Use: 2004/12/08 First Use In Commerce: 2004/12/08 All goods and services in the class are cancelled, namely: Apparel for women, men, teen girls and teen boys, namely, bikinis; beach wear, namely, gym shorts, haltertops, jogging suits, leggings, polo shirts, ponchos, shorts, skirts, sweat suits, sweat shirts; casual wear, namely, blouses, dungarees, jeans; women's apparel, namely, dresses, mini skirts; women's lingerie, namely, bustiers; men's clothing, namely, shorts

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Related Proceedings	Opposition Number 91198673
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77907193	Application Date	01/07/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WHO DAT?		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1983/10/14 First Use In Commerce: 1983/10/26 Apparatus for recording, transmission, processing and reproduction of sound, images or data; Audio and video recordings featuring music and entertainment and cultural events; CD sleeves; Compact discs featuring music; Digital music downloadable from the Internet; Downloadable MP3 files, MP3 recordings, on-line discussion boards, webcasts , webinars and podcasts featuring music, audio books and news broadcasts; Downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to music and entertainment and cultural events; Labels carrying magnetically, optically, or electronically recorded or encoded information; Musical sound recordings; Musical video recordings; Phonograph record sleeves; Phonograph records featuring music</p> <p>Class 025. First use: First Use: 1983/10/14 First Use In Commerce: 1983/10/26 Bottoms; Boxer briefs; Boxer shorts; Caps; Hats; Head scarves; Headbands; Headwear; Knit shirts; Ladies' underwear; Long-sleeved shirts; Men's underwear; Panties; Panties, shorts and briefs; Pants; Scarves; Shirts and short-sleeved shirts; Short-sleeved or long-sleeved t-shirts; Suspenders; Sweat shirts; T-shirts; Underwear; Visors</p>		

U.S. Registration No.	2890070	Application Date	03/04/2002
Registration Date	09/28/2004	Foreign Priority Date	NONE
Word Mark	WHO DAT? BLUES BAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2000/01/11 First Use In Commerce: 2003/01/15 Entertainment, namely, live performances by a musical band		

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	WHO DAT? (word mark + design) WHO DAT! (word mark + design) WHO DAT (word mark + design) WHO DAT? (word mark) WHO DAT! (word mark) WHO DAT (word mark)
Goods/Services	apparel, clothing

Attachments	77907193#TMSN.jpeg (1 page)(bytes) Petition to Cancel.pdf (7 pages)(3611004 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brandon J Frank/
Name	Brandon J Frank
Date	03/30/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 4,118,751

Mark: WHO DAT

Issued: March 27, 2012

WHO DAT?, INC.,
Petitioner,

v.

WILLIAM MYERS,
Registrant.

Cancellation No.: _____

PETITION FOR CANCELLATION

Who Dat?, Inc. ("Petitioner"), a Louisiana corporation having its principal place of business at 19926 Whittenburg, San Antonio, Texas 78256, believes it is damaged by Registration No. 4,118,751 and hereby petitions to cancel the same under the provisions of 15 U.S.C. 1604(3). As grounds for cancellation, Petitioner asserts that:

1. For nearly three (3) decades, Petitioner and Petitioner's licensees have utilized the trademark "Who Dat?" in connection with the marketing, promotion and sale of various goods, including but not limited to clothing and apparel.

2. Upon information and belief, William Myers is an individual residing at 309 West 14th Avenue, New York, New York 10011 (the "Registrant").

3. On November 1, 2004, Registrant filed an application to register the mark WHO DAT (as a standard character mark) under Section 1(b) of the Lanham Act, 15 U.S.C. 1051(a). On January 20, 2009, a Notice of Allowance issued. Registrant then filed five (5) requests to extend the date to file the appropriate Statement of Use.

4. On January 20, 2012, Registrant filed its Statement of Use. Despite the five (5) extension requests filed in 2009, 2010 and 2011, Registrant claimed his date of first use and his date of first use in commerce to be December 8, 2004.

5. Based on this application, Registrant obtained U.S. Registration No. 4,118,751 (the "Registration"), which issued on March 27, 2012 for the term WHO DAT used in connection with "apparel for women, men, teen girls and teen boys, namely, bikinis; beach wear, namely, gym shorts, halter tops, jogging suits, leggings, polo shirts, ponchos, shorts, skirts, sweat suits, sweat shirts, casual wear, namely, blouses, dungarees, jeans, women's apparel, namely dresses, miniskirts, women's lingerie, namely, bustiers, men's clothing, namely, shorts."

6. On January 7, 2010, Petitioner filed an application to register its WHO DAT? trademark in connection with various clothing and apparel items. Petitioner's application claims a date of first use and first use in commerce of October 26, 1983. Petitioner's application, assigned Serial No. 77/907,193, was suspended in light of Registrant's earlier-filed application and Registrant's multiple requests for extension of the deadline to file his Statement of Use. Notwithstanding Registrant's earlier-filed application and suspension of Petitioner's application, Petitioner is entitled to registration of its WHO DAT trademark for clothing and apparel because Petitioner is the senior user of the mark for those goods.

7. In addition to its valid common law rights in the WHO DAT trademark and its ownership of Application Serial No. 77/907,193, Petitioner also owns U.S. Registration No. 2,890,070 for the mark WHO DAT? BLUES BAND in connection with "entertainment, namely, live performances by a musical band." Petitioner's Registration

No. 2,899,070 was issued on September 28, 2004, has become incontestable and asserts a date of first use and first use in commerce of January 15, 2003.

8. In addition to its valid common law rights in the WHO DAT trademark, and its incontestable federal registration and other applications, Petitioner also owns several Louisiana State Registrations for the mark WHO DAT, including “WHO DAT?” in International Class 25 for clothing, with date of first use of October 31, 1983, Book # 63-4800.

9. For many years and long before November 1, 2004, the filing date of Registrant’s intent-to-use application and long before Registrant obtained U.S. Registration No. 4,118,751 (the “Registration”), which issued on March 27, 2012 for the term WHO DAT, Petitioner has used the trademark WHO DAT and variations thereof in connection with its business and have authorized numerous business partners, licensees and/or sponsors to use its WHO DAT Mark on or in connection with the sale and offering for sale of a wide variety of goods and services, including apparel and clothing.

10. During its long, widespread, and continuous use of the WHO DAT Mark, Petitioner and its authorized business partners, licensees and sponsors have expended considerable time, effort, and money in publicizing and advertising the sale of goods and services bearing the WHO DAT Mark.

11. Petitioners actively seek to identify and stop perceived infringers of its WHO DAT Marks.

12. Petitioner and its business partners, licensees and sponsors have sold, and offered for sale, goods and services bearing the WHO DAT Mark throughout the country in various states and territories of the United States, and in numerous channels of trade.

13. Who Dat?, Inc.'s WHO DAT Marks have a high degree of distinctiveness due to the duration and extent of Petitioner's use, advertising, and publicity of its WHO DAT Mark, and has made the WHO DAT Mark famous.

FIRST GROUND FOR CANCELLATION - FRAUD

14. On January 20, 2012, Registrant filed with the U.S. Trademark Office a Statement of Use which included a sworn declaration signed under penalty of perjury by Registrant.

15. Registrant swore that its date of first use and date of first use in commerce are true and that he was using the WHO DAT mark in connection with each of the goods identified on or before December 8, 2004. Upon information and belief, such statements were false at the time they were made. Indeed, Registrant's filing in 2009, 2010 and 2011 of five (5) requests for extension of time to file his statement of use undermine the representations in Registrant's sworn declaration.

16. Upon information and belief, the apparel tag that Registrant submitted with its Statement of Use was not being used by Registrant on December 8, 2004.

17. Upon information and belief, Registrant knew that the specimen of use that he submitted on January 20, 2012 was not a specimen indicative of Registrant's use of the mark as early as December 8, 2004.

18. Upon information and belief, Registrant knew that his statements regarding use of the WHO DAT mark were false at the time such statements were made.

SECOND GROUND FOR CANCELLATION – PETITIONER'S PRIOR USE

19. Petitioner has continuously marketed, promoted and sold clothing and apparel under the brand name "WHO DAT?" for nearly three (3) decades. Specifically, and as

shown in Petitioner's Application Serial No. 77/907,193, Petitioner's date of first use and date of first use in commerce of its WHO DAT? trademark in connection with clothing and apparel is at least as early as October 14, 1983. Further, Petitioner holds incontestable U.S. Reg. No. 2,890,070 for the trademark WHO DAT? BLUES BAND with a date of first use and first use in commerce of January 15, 2003, and Louisiana State Registration, Book # 63-4800, for the trademark WHO DAT? with a date of first use in commerce of October 31, 1983 in connection with clothing and other goods and services..

20. Even if Registrant's sworn declaration is truthful, and Registrant's first date of use and first date of use in commerce are December 8, 2004, Petitioner is the senior user of the WHO DAT mark.

21. Petitioner is the first to adopt and use the WHO DAT? mark anywhere in the country and, as a result, Petitioner has superior common law rights in the WHO DAT? mark. Petitioner's prior use pre-dates Registrant's purported first use by more than twenty (20) years. The public has come to recognize Petitioner's trademark as signifying Petitioner and Petitioner's goods.

22. Petitioner will be and has been damaged by the Registrant's registration because such registration supports and assists Registrant in the confusing and misleading use of the mark registered, and will give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

23. Registrant's use and Registration are likely to cause confusion, deception and mistake within the meaning of Section 2(d) of the Lanham Act with Petitioner's prior

rights to the WHO DAT? trademark. Therefore, in light of Petitioner's prior use, the Registration should be cancelled.

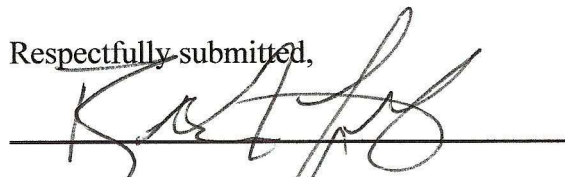
24. Registration should be cancelled pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. 1052(a), on the grounds that Registrant's use of the designation WHO DAT will falsely suggest a connection between Registrant and Petitioner named herein, to the damage of Petitioner.

25. Registration should be refused pursuant to Sections 2(f) and 43(c) of the Lanham Act, 15 U.S.C. 1052(f) and 1125(c), on the grounds that Petitioner will be damaged by the registration obtained by Registrant because the registration will dilute the distinctive and famous quality of Who Dat?, Inc.'s WHO DAT Marks.

WHEREFORE, Petitioner prays that Registration No. 4,118,751 be cancelled pursuant to 15 U.S.C. 1064(3) because: (1) the Registration was obtained via fraudulent representations to the Trademark Office; and (2) Petitioner is the senior user of the mark in connection with the goods and services identified in the Registration.

Dated: March 29, 2012

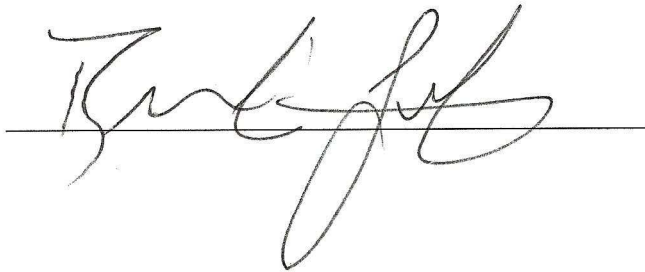
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brandon Joseph Frank', is written over a horizontal line.

Brandon Joseph Frank
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New Orleans, LA 70116
(225) 802-1499
brandonjfrank@gmail.com

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing Petition for Cancellation was served on the attorney of record for registrant, Roberto L. Gomez, Ostrager, Chong, Flaherty 7 Broitman, P.C., 57 0 Lexington Avenue, 17th Floor, New York, New York 10022, via postage prepaid by first-class mail on March 29, 2012.

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "R. L. Gomez".